

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

RILEY L. HOLIFIELD, JR.,	}	
etc.,	}	
	}	
Plaintiff,	}	CIVIL ACTION NO.
	}	08-AR-0109-S
v.	}	
	}	
CITY OF BIRMINGHAM, et al.,	}	
	}	
Defendants.	}	

**MEMORANDUM OPINION**

Plaintiff, Riley L. Holifield, Jr., as Administrator of the Estate of Riley Devon Holifield, deceased, chose not to file a sixth amended complaint as contemplated by the court's order of July 27, 2009.


The court has spent a great deal of time and energy in this case, cajoling plaintiff and instructing him how to draft a complaint within the constraints of Rule 8(a)(2), Rule 12(b)(6), and Rule 11. The court ordered plaintiff to appear in person and at a time when his counsel was endeavoring to withdraw. The order was mailed to plaintiff by United States Mail, postage prepaid, by the Clerk addressed to plaintiff at his residence address. It was not returned by the Postal Service, and presumptively was received by plaintiff. Nevertheless, he did not appear to hear the court attempt to explain to him what was wrong with his complaint and to give him personal fair warning about what would happen if corrections were not made. Because plaintiff did not appear in

court, it became impossible to get through to him the seriousness of his pleading problem and the precariousness of his problem. His counsel, for some unexplained reason, withdrew his motion for leave to withdraw, and continued to file confusing amendments that were largely inscrutable, and that not only failed to repair the deficiencies that had been described to him, but the complaint deteriorated to the point of collapse.

In exasperation, but in a last fond hope that a recast complaint, drafted in careful response to the court's criticisms and suggestions, might create one or more triable issues, the court gave plaintiff until 4:30 p.m., August 4, 2009, to file a sixth amended complaint, eliminating the chaff and describing any kernels of wheat that might provide a factual and legal basis for a claim against one or more of the properly named defendants. Plaintiff ignored the court's admonition and declined the court's invitation. The court has never said, and does not now say, that it would be impossible for this plaintiff to state a provable legal claim against one or more defendants. The court does say that plaintiff's time for doing so has elapsed.

A separate appropriate order of dismissal will be entered.

DONE this 5th day of August, 2009.

  
WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE